ST 99-0002-PLR 01/08/1999 COMPUTER SOFTWARE

Licenses of computer software are not taxable if they meet all of the criteria listed in Section 130.1935(a)(1). See 86 Ill. Adm. Code 130.1935. (This is a PLR.)

January 8, 1999

Dear Mr. Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of September 16, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

> COMPANY develops and licenses computer software. We believe that our software license agreement (copy enclosed) meets the criteria for non-taxable transactions under Illinois sales tax laws. Please review the agreement and let us know if our understanding is correct.

Sales of "canned" computer software are taxable retail sales in Illinois. See the enclosed copy of 86 Ill. Adm. Code 130.1935. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935(c).

Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See Section 130.1935(c)(3).

If transactions for the licensing of computer software meet all of the criteria provided in Section 130.1935(a)(1), neither the transfer of the software or the subsequent software updates will be subject to Retailers' Occupation Tax. A license of software is not a taxable retail sale if:

A) it is evidenced by a written agreement signed by the licensor and the customer;

B) it restricts the customer's duplication and use of the software;

C) it prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party);

D) the vendor will provide another copy at minimal or no charge if the customer loses or damages the software; and

E) the customer must destroy or return all copies of the software to the vendor at the end of the license period.

As stated above, licenses of computer software are not taxable if they meet all of the criteria listed in Section 130.1935(a)(1). Review of the "Multinational Software Product License Agreement ("Agreement")" attached to your letter indicates that the Agreement contains provisions meeting the requirements of Section 130.1935 (a)(1)(A), (B), (C) and (E). The Agreement does not contain provisions meeting the requirements of subsection (a)(1)(D).

As stated above, that part requires that an agreement contain a provision or provisions stating that the vendor will provide another copy of software at minimal or no charge if the customer loses or damages the software. Since the agreement does not contain this provision, all of the requirements of subsection (a)(1) of Section 130.1935 have not been met to qualify as a license of software. Consequently, we believe that the Agreement constitutes a taxable sale of canned software.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Bill Lundeen
Chief Counsel

BL:TDC:msk
Enc.